

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SHANNON ANDERSON SAEVIK,

11 Plaintiff,

12 v.

13 SWEDISH MEDICAL CENTER and
14 REBECCA DAY, individually and as Clinic
Operations Manager of its Organ Transplant
and Liver Center,

15 Defendants.

16 CASE NO. C19-1992-JCC

17 ORDER

18 This matter comes before the Court on the parties' stipulated motion for entry of a
19 protective order (Dkt. No. 21). Having thoroughly considered the motion and the relevant record
20 and finding good cause, the Court hereby GRANTS the motion and ENTERS the following
protective order:

21 **1. PURPOSES AND LIMITATIONS**

22 Discovery in this action is likely to involve production of confidential, proprietary, or
23 private information for which special protection may be warranted. Accordingly, the parties
24 hereby stipulate to and petition the Court to enter the following stipulated protective order. The
25 parties acknowledge that this order is consistent with Western District of Washington Local Civil
26 Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the

1 protection it affords from public disclosure and use extends only to the limited information or
2 items that are entitled to confidential treatment under the applicable legal principles, and it does
3 not presumptively entitle parties to file confidential information under seal.

4 **2. “CONFIDENTIAL” MATERIAL**

5 “Confidential” material shall include the following documents and tangible things
6 produced or otherwise exchanged: private information concerning Defendants’ employees,
7 Plaintiff’s medical records, Plaintiff’s tax records, and other information concerning the parties
8 or third parties which is private and personal; documents that describe, contain, or disclose
9 patient information, intellectual property, financial information, trade secrets, competitive and
10 strategic initiatives, and business plans or other proprietary business information.

11 **3. SCOPE**

12 The protections conferred by this order cover not only confidential material (as defined
13 above), but also: (1) any information copied or extracted from confidential material; (2) all
14 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
15 conversations, or presentations by parties or their counsel that might reveal confidential material.

16 However, the protections conferred by this order do not cover information that is in the
17 public domain or becomes part of the public domain through trial or otherwise.

18 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

19 **4.1 Basic Principles.** A receiving party may use confidential material that is
20 disclosed or produced by another party or by a non-party in connection with this case only for
21 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
22 disclosed only to the categories of persons and under the conditions described in this order.
23 Confidential material must be stored and maintained by a receiving party at a location and in a
24 secure manner that ensures that access is limited to the persons authorized under this order.

25 **4.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
26 ordered by the Court or permitted in writing by the designating party, a receiving party may

1 disclose any confidential material only to:

- 2 (a) The receiving party's counsel of record in this action, as well as
3 employees of counsel to whom it is reasonably necessary to disclose the
4 information for this litigation;
- 5 (b) The officers, directors, and employees (including in-house counsel) of the
6 receiving party to whom disclosure is reasonably necessary for this litigation,
7 unless the parties agree that a particular document or material produced is for
8 Attorney's Eyes Only and is so designated;
- 9 (c) Experts and consultants to whom disclosure is reasonably necessary for
10 this litigation and who have signed the "Acknowledgment and Agreement to Be
11 Bound" (Exhibit A);
- 12 (d) The Court, court personnel, and court reporters and their staff;
- 13 (e) Copy or imaging services retained by counsel to assist in the duplication
14 of confidential material, provided that counsel for the party retaining the copy or
15 imaging service instructs the service not to disclose any confidential material to
16 third parties and to immediately return all originals and copies of any confidential
17 material;
- 18 (f) During their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the "Acknowledgment and Agreement
20 to Be Bound," unless otherwise agreed by the designating party or ordered by the
21 Court. Pages of transcribed deposition testimony or exhibits to depositions that
22 reveal confidential material must be separately bound by the court reporter and
23 may not be disclosed to anyone except as permitted under this order; and
- 24 (g) The author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information.

26 4.3 **Filing Confidential Material.** Before filing confidential material or discussing or

1 referencing such material in court filings, the filing party shall confer with the designating party,
 2 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
 3 remove the confidential designation, whether the document can be redacted, or whether a motion
 4 to seal or stipulation and proposed order is warranted. During the meet-and-confer process, the
 5 designating party must identify the basis for sealing the specific confidential material at issue,
 6 and the filing party shall include this basis in its motion to seal, along with any objection to
 7 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
 8 followed and the standards that will be applied when a party seeks permission from the Court to
 9 file material under seal. A party who seeks to maintain the confidentiality of its information must
 10 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
 11 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied in
 12 accordance with the strong presumption of public access to the Court's files.

13 **5. DESIGNATING PROTECTED MATERIAL**

14 5.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each
 15 party or non-party that designates information or items for protection under this order must take
 16 care to limit any such designation to specific material that qualifies under the appropriate
 17 standards. The designating party must designate for protection only those parts of material,
 18 documents, items, or oral or written communications that qualify, so that other portions of the
 19 material, documents, items, or communications for which protection is not warranted are not
 20 swept unjustifiably within the ambit of this order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 22 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 23 unnecessarily encumber or delay the case development process or to impose unnecessary
 24 expenses and burdens on other parties) expose the designating party to sanctions.

25 If it comes to a designating party's attention that material that it designated for protection
 26 does not qualify for protection, the designating party must promptly notify all other parties that it

1 is withdrawing the mistaken designation.

2 5.2 **Manner and Timing of Designations.** Except as otherwise provided in this order
3 (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
4 disclosure or discovery material that qualifies for protection under this order must be clearly so
5 designated before or when the material is disclosed or produced.

6 (a) **Information in documentary form** (*e.g.*, paper or electronic documents
7 and deposition exhibits, but excluding transcripts of depositions or other pretrial
8 or trial proceedings): the designating party must affix the word
9 “CONFIDENTIAL” to each page that contains confidential material. If only a
10 portion or portions of the material on a page qualifies for protection, the
11 producing party also must clearly identify the protected portion(s) (*e.g.*, by
12 making appropriate markings in the margins).

13 (b) **Testimony given in deposition or in other pretrial proceedings:** the
14 parties and any participating non-parties must identify on the record, during the
15 deposition or other pretrial proceeding, all protected testimony, without prejudice
16 to their right to so designate other testimony after reviewing the transcript. Any
17 party or non-party may, within 15 days after receiving the transcript of the
18 deposition or other pretrial proceeding, designate portions of the transcript, or
19 exhibits thereto, as confidential. If a party or non-party desires to protect
20 confidential material at trial, the issue should be addressed during the pre-trial
21 conference.

22 (c) **Other tangible items:** the producing party must affix the word
23 “CONFIDENTIAL” in a prominent place on the exterior of the container or
24 containers in which the information or item is stored. If only a portion or portions
25 of the information or item warrant protection, the producing party, to the extent
26 practicable, must identify the protected portion(s).

1 5.3 **Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the designating party's
3 right to secure protection under this order for such material. Upon timely correction of a
4 designation, the receiving party must make reasonable efforts to ensure that the material is
5 treated in accordance with the provisions of this order.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 **Timing of Challenges.** Any party or non-party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 **Meet and Confer.** The parties must make every attempt to resolve any dispute
14 regarding confidential designations without court involvement. Any motion regarding
15 confidential designations or for a protective order must include a certification, in the motion or in
16 a declaration or affidavit, that the movant has engaged in a good faith meet-and-confer
17 conference with other affected parties in an effort to resolve the dispute without court action. The
18 certification must list the date, manner, and participants to the conference. A good faith effort to
19 confer requires a face-to-face meeting or a telephone conference.

20 6.3 **Judicial Intervention.** If the parties cannot resolve a challenge without court
21 intervention, the designating party may file and serve a motion to retain confidentiality under
22 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
23 persuasion in any such motion shall be on the designating party. Frivolous challenges and those
24 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
25 other parties) may expose the challenging party to sanctions. All parties must continue to
26 maintain the material in question as confidential until the Court rules on the challenge.

1 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
2 **OTHER LITIGATION**

3 If a party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
5 party must:

- 6 (a) Promptly notify the designating party in writing and include a copy of the
7 subpoena or court order;
- 8 (b) Promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this order. Such notification shall include a copy of
11 this order; and
- 12 (c) Cooperate with respect to all reasonable procedures sought to be pursued
13 by the designating party whose confidential material may be affected.

14 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a receiving party learns that it has disclosed confidential material to any person or in
16 any circumstance not authorized under this order, the receiving party must immediately (a) notify
17 in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
18 all unauthorized copies of the protected material, (c) inform the person or persons to whom
19 unauthorized disclosures were made of all the terms of this order, and (d) request that such
20 person or persons execute the "Acknowledgment and Agreement to Be Bound."

21 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
22 **PROTECTED MATERIAL**

23 When a producing party gives notice to receiving parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
26 provision is not intended to modify whatever procedure may be established in an e-discovery

1 order or agreement that provides for production without prior privilege review. The parties agree
2 to the entry of a non-waiver order under Federal Rule of Evidence 502(d) as set forth herein.

3 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

4 Within 60 days after the termination of this action, including all appeals, each receiving
5 party must return all confidential material to the producing party, including all copies, extracts
6 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
7 destruction.

8 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
9 documents filed with the Court; trial, deposition, and hearing transcripts; correspondence;
10 deposition and trial exhibits; expert reports; attorney work product; and consultant and expert
11 work product, even if such materials contain confidential material.

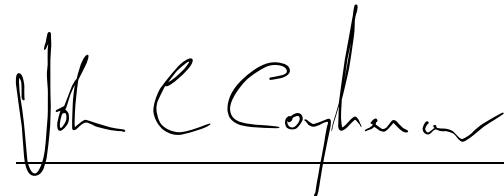
12 The confidentiality obligations imposed by this order shall remain in effect until a
13 designating party agrees otherwise in writing or a court orders otherwise.

14 **IT IS SO ORDERED.**

15 **IT IS FURTHER ORDERED** that pursuant to Federal Rule of Evidence 502(d), the
16 production of any documents in this proceeding shall not, for the purposes of this proceeding or
17 any other federal or state proceeding, constitute a waiver by the producing party of any privilege
18 applicable to those documents, including the attorney-client privilege, attorney work-product
19 protection, or any other privilege or protection recognized by law.

20 DATED this 13th day of August 2020.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the stipulated protective order that was entered by the United States District Court for the Western District of Washington on _____ [date] in the case of *Saevik v. Swedish Medical Center*, Case No. C19-1992-JCC (W.D. Wash. 2019).

I agree to comply with and to be bound by all the terms of this stipulated protective order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this stipulated protective order to any person or entity except in strict compliance with the provisions of this order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this stipulated protective order, even if such enforcement proceedings occur after termination of this action.

Dated: _____

City and State where sworn and signed: _____

Printed name:

Signature: